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Letter dated 28 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 September 2002 (S/2002/995).

The Counter-Terrorism Committee has received the attached supplementary report from Kyrgyzstan, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 22 July 2003 from the Permanent Representative of Kyrgyzstan to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to submit to you herewith the supplementary report prepared by the Government of the Kyrgyz Republic pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Kamil **Baialinov**
Ambassador
Permanent Representative of the Kyrgyz Republic
to the United Nations

Enclosure

[Original: Russian]

Supplementary report of the Government of the Kyrgyz Republic in response to the preliminary questions and remarks of the United Nations Security Council Counter-Terrorism Committee

Paragraph 1 (a)

Question:

Please provide the CTC with an outline of, and a progress report on, the Act "on counteracting the legalization (laundering) of income obtained by criminal means". In which cases will this Act be applicable to the financing of terrorist organizations? Please explain how the provisions of the draft Presidential decree "on measures to prevent the use of the Kyrgyz Republic's financial system for the legalization (laundering) of funds obtained by illegal means and to prevent to financing of terrorism" will implement paragraph 1 of the resolution. Please inform the CTC when the Presidential Decree has entered into force.

Response:

The Bill on combating the financing of terrorism and the laundering of income obtained by criminal means was approved by the Government (decree No. 818 of 2 December 2002) and referred to the Parliament for consideration. It has now been approved by the Budget and Finance Committee of the Legislative Assembly of the Parliament and will be considered by the plenary session of that body.

The overall aim of the Bill is to establish legal arrangements to combat the financing of terrorism and the laundering of income obtained by criminal means in order to defend the rights and legitimate interests of citizens, the State and society and the integrity of the financial system of Kyrgyzstan against criminal harm. The Bill is based on accepted norms and international principles to prevent the financial system from being used to finance terrorism and launder money obtained by criminal means. Its main function is to set up a system of measures to prevent and combat those phenomena.

The Bill on counteracting the legalization (laundering) of income obtained by criminal means is currently being discussed by the Parliament, and the draft presidential order "on measures to prevent the use of the Kyrgyz Republic's financial system for the legalization (laundering) of funds obtained by illegal means and to prevent to financing of terrorism" is also at the finalization stage.

Question:

Please outline the instructions given to commercial banks (page 7 of the report) in order to facilitate the identification of suspicious operations.

Response:

Currently, commercial banks' handling of deposits is governed by the "temporary instructions for handling deposits" approved by Resolution No. 4/4 of

the National Bank of Kyrgyzstan, of 19 February 2003. In order to regulate banks' handling of deposits more closely, and to prevent accounts from being used for criminal purposes, the National Bank of Kyrgyzstan has been working on a new version of the instructions.

Although the Bill on combating the financing of terrorism and the laundering of income obtained by criminal means is still under discussion in the Parliament, the instructions contain recommendations for developing internal checks to prevent the legalization (laundering) of funds. The recommendations match the content of the Bill and should help to raise ethical and professional standards in the financial sector and to prevent the deliberate or inadvertent use of banks by dishonest customers.

With the aim of preventing suspicious transactions, the National Bank of Kyrgyzstan sent a Circular Letter (No. 212-3/880 of 28 February 2003) to banks and other financial and credit institutions with the authority to open and maintain accounts. It contained recommendations for drawing up rules for banks' internal monitoring of procedures for identifying and tracking their customers. It lays down a list of criteria for banks to use in determining which transactions should be monitored and for recognizing and detecting unusual activity.

A joint World Bank-International Monetary Fund mission was in Kyrgyzstan from 11 to 28 May 2002 and from 26 August to 9 September 2002 to implement a Financial Sector Assessment Program (FSAP). It made recommendations for countering money-laundering and the financing of terrorism and noted the need for a comprehensive approach to tackling those problems in conformity with the international standards of the Financial Action Task Force (FATF) and to drafting the necessary legislation.

Question:

Do informal banking networks (such as Hawala) exist in Kyrgyzstan? Please outline the legal provisions regulating them, if any.

Response:

The extent of transfers through alternative, informal networks (hawala, hundi and chop) is negligible, because article 776 of Kyrgyzstan's Civil Code stipulates that cash transfers between natural and legal persons within Kyrgyzstan are allowed without any restriction.

Paragraph 1 (b)

Question:

Please explain in which cases article 183 of the Criminal Code will be applicable to the financing of terrorist acts.

Response:

Article 183 of the Criminal Code — "Legalization of monetary assets or other property acquired by illegal means" — aims at protecting the country's economic system and money circulation against the entry of large amounts of unverified funds or other assets and at preventing organized crime aimed at generating profit.

It is a known fact that terrorist organizations are funded partly by illegally obtained money (proceeds from the sale of drugs, weapons and so on) which is laundered through the banking system and transport and construction companies. Operations to detect and institute criminal prosecutions against individuals for such acts under article 183 of the Criminal Code can be a pre-emptive measure leading to closure of the channels used to finance terrorist activities.

The National Bank of Kyrgyzstan has drawn up a Bill on amendments and additions to certain legislative acts of the Kyrgyz Republic, chiefly the Criminal Code and the Code on Administrative Responsibility. The draft has met all legislative requirements and is now in the Zhogorku Kenesh (it has already been approved by two committees). It was drawn up in order to establish a comprehensive legislative mechanism to combat the financing of terrorism and the laundering of income obtained by criminal means and to prevent a conflict of laws. The National Bank's comprehensive approach is reflected in the handling of such issues simultaneously not just in the country's civil legislation, but also in its administrative and criminal legislation. The two joint World Bank-International Monetary Fund FSAP missions which examined Kyrgyzstan's financial sector had indicated the need for such an approach.

The aim of the amendments to the Code on Administrative Responsibility is to establish administrative liability for concealing, distorting or failing to provide information on transactions involving monetary or other assets subject to compulsory monitoring because they meet the criteria laid down by the legislation on combating the financing of terrorism and the laundering of income obtained by criminal means or by a suitably empowered State entity in accordance with that legislation.

The aim of the amendments to article 183 of the Criminal Code is to establish criminal liability for large-scale transactions, involving cash or other assets clearly obtained by criminal means, intended to give the appearance of legitimate ownership, use and access to the monetary or other assets, and for the financing of terrorism. A note attached to that article specifies that individuals would escape criminal liability for such offences if they helped to reveal those offences and/or voluntarily handed over the monetary or other assets obtained by criminal means, provided that their actions did not involve another offence.

The existing wording of article 183 of the Criminal Code does not cover liability for the financing of terrorism.

Question:

How do Kyrgyz authorities intend to implement articles 2 and 4 of the International Convention for the Suppression of the Financing of Terrorism?

Response:

There is a proposal to add an article 226-1 to the Criminal Code, precisely to cover liability for the financing of terrorism. Until now, the Criminal Code has provided for such liability only for complicity in terrorism. During the drafting of this article, the National Bank of Kyrgyzstan was guided by the standards contained in articles 2 and 4 of the International Convention for the Suppression of the Financing of Terrorism, to which Kyrgyzstan acceded through Act No. 79 of 15

April 2003 (in the case of article 2, the National Bank acted in conformity with the country's traditions regarding standard-setting).

Paragraph 1 (c)

Question:

Please describe the procedure leading to the freezing of funds, other financial assets or economic resources suspected of belonging to terrorists or terrorist organizations.

Response:

In accordance with the Act on the National Bank of Kyrgyzstan, the National Bank, as the authority supervising and regulating the activities of banks and other financial and credit institutions, may halt, for the period established by its own normative acts, any banking transactions classified by national legislation as suspicious, at its own initiative or in response to a written request from the law enforcement agencies responsible for detecting and preventing financial wrongdoing.

Question:

How is a request by a foreign authority to freeze funds, etc., in Kyrgyzstan dealt with under Kyrgyz laws or regulations?

Response:

In accordance with the legal assistance agreements concluded by Kyrgyzstan, foreign authorities may request the National Bank of Kyrgyzstan to freeze the assets of financial or credit institutions through the appropriate law enforcement agencies.

Question:

Please elaborate on the "*sanctions provided for under banking legislation*" to the extent that they are relevant for the implementation of this subparagraph.

Response:

The procedure for freezing assets (sanctions) justifiably assumed to belong to terrorists or terrorist organizations is provided for in the Bill on combating the financing of terrorism and the laundering of income obtained by criminal means.

Kyrgyzstan's banking legislation provides that if banks or other banking and credit institutions whose activities are licensed by the National Bank of Kyrgyzstan are discovered to be in breach of economic standards, banking legislation and the normative acts and stipulations of the National Bank of Kyrgyzstan, or if they present no information or unreliable and/or incomplete information, the National Bank of Kyrgyzstan may:

- Issue a compulsory order to correct the violations immediately, or within a prescribed deadline;
- Introduce higher economic standards;
- Increase the level of compulsory reserves;

- Impose a fine representing no more than 1 per cent of paid-up capital per actual violation, in accordance with the procedure established by the Board of the National Bank;
- Impose a fine on individual executive officers, in the amount and under the procedure determined by national legislation;
- Require compulsory:
  (a) Replacement of some or all officials;
  (b) Conduct of financial improvements;
  (c) Recapitalization or reorganization;
- Require an unscheduled audit at the expense of the party being audited;
- Appoint temporary management for up to six months in order to safeguard assets;
- Suspend licences for up to six months; in addition, temporary management may be appointed for up to six months and some or all transactions covered by licences may be restricted;
- Revoke licences;
- Begin bankruptcy proceedings, in accordance with national legislation.

Paragraph 1 (d)

Question:

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

Response:

Resolution No. 13.2 of the Board of the National Bank of Kyrgyzstan, of 16 April 2003 (registered by the Ministry of Justice of Kyrgyzstan under number 37-03 on 22 April 2003), lays down requirements for the definition of offshore entities or individuals and offshore centres. The purpose of the resolution is to protect the safety, reliability and stability of Kyrgyzstan's banking and payment systems, to safeguard the interests of investors and other creditors of commercial banks, to prevent the laundering of money obtained by criminal means, to help combat the financing of terrorism and to ensure that banking transactions are transparent. In order to regulate and supervise the activities of commercial banks and other financial and credit institutions, a list of 42 States and territories (offshore centres) which grant favourable tax arrangements and/or do not require full disclosure and supply of information to banking supervision authorities has been adopted and attached to the decree.

On 26 April 2002, the Board of the National Bank of Kyrgyzstan adopted Resolution No. 20/12 on requirements for the definition of offshore entities or individuals. The purpose of the resolution is to protect Kyrgyzstan's reputation, financial, banking and payment systems, to safeguard the interests of investors and other creditors of banks, to prevent the laundering of money obtained by criminal means, to help combat the financing of terrorism and to ensure that banking transactions are transparent.

The resolution defines offshore entities or individuals as follows: *banks, subsidiary banks, holding companies, financial and credit institutions, natural and legal persons registered or resident in States or territories with favourable tax arrangements and/or States or territories which do not disclose and/or provide information to banking supervision authorities in accordance with the requirements and recommendations of the Basel Committee on Banking Supervision*. Those recommendations call for information and accounts regarding transactions carried out by financial and credit institutions to be disclosed and supplied to banking supervision authorities. The definition of offshore entities or individuals was introduced because some money-laundering transactions involve citizens or natural and legal persons of offshore centres.

Under the terms of the resolution described above, all types of transaction or deal between commercial banks and entities or individuals of offshore centres are *null*, except in the case of transactions or deals with entities or individuals of States or territories with an I-high rating under the financial regulation standards established by the Financial Stability Forum. Among the transactions and deals considered null are those carried out by commercial banks on their own behalf with entities or individuals of offshore centres (including dealings through correspondents), in other words, commercial banks' own transactions. The requirement is aimed at minimizing the risk of loss to investors and other creditors of a bank, and at preventing a bank itself from conducting transactions with entities or individuals of offshore centres. The classification as "null" assumes that all commercial bank transactions and deals are not taxable and that the likelihood of determining their actual value is infinitesimally small. Such transactions and deals are also considered losses under the provisions "on classification of assets and corresponding recording in reserves to cover potential losses and shortfalls", approved by Resolution No. 20/2 of the Board of the National Bank of Kyrgyzstan, of 26 April 2002, which require a 100 per cent reserve to be constituted to cover potential losses and shortfalls caused by banks' expenditure.

The classification as "null" of commercial bank transactions and deals with entities or individuals of offshore centres does not apply where relations are being conducted with subsidiaries which, while registered in offshore centres, are attached to head offices registered outside those offshore centres. This means that the resolution applies to representative offices (subsidiaries) of entities or individuals of offshore centres which are registered in Kyrgyzstan but have head offices in offshore centres.

Question:

Which practical steps have been taken in Kyrgyzstan in order to prevent the provision of material assistance to persons involved in terrorist activities as required by the "*Treaty on Joint Action to Combat Terrorism, Political and Religious Extremism, Transnational Organized Crime and Other Threats to Stability and Security*"?

Response:

The Treaty on Joint Action to Combat Terrorism, Political and Religious Extremism, Transnational Organized Crime and Other Threats to Stability and Security provides for cooperation in the taking of practical steps to ensure that the territory of States is not used for the creation of terrorist bases or training camps or for the preparation or organization of terrorist acts directed against other States and

their citizens, and in taking action to prevent the recruitment of persons for participation in the activities of terrorist and other extremist organizations and the provision of material assistance to the activities of such organizations.

On 26 November 2000, the President of Kyrgyzstan signed Act No. 92 "on the ratification of the Treaty between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan on joint action to combat terrorism, political and religious extremism, transnational organized crime and other threats to stability and security".

The law enforcement agencies and intelligence services of Kyrgyzstan are stepping up organizational and operational action against subversive and other harmful activities of international organizations of terrorists and religious extremists in Kyrgyzstan.

Active intelligence and counter-intelligence efforts are being focused on the Islamic Movement of Uzbekistan (IMU) and its military/political allies, both inside and outside the country. Those efforts include blocking of the channels used to "legalize" IMU fighters and of the plans by foreign centres and emissaries of terrorist organizations to use Kyrgyzstan as a forward base for moving to other countries.

With the aim of combating the formation of illegal armed groups, efforts are under way to track down and remove from illegal circulation weapons, explosives and ammunition. The staff and resources of Kyrgyzstan's National Security Service have also been focused on obtaining rapid and reliable information on the plans and intentions of international terrorist organizations, including IMU conspirators acting against the States parties to the Agreement and the Commonwealth of Independent States.

During the armed incursions by IMU fighters in 1999 and 2000, staff of the National Security Service conducted intelligence, counter-intelligence, anti-terrorist, search and screening operations directly where fighters were active and armed clashes were taking place. They also ensured the security of a variety of important political events in the country.

In order to have forewarning of plans for armed attacks by international IMU conspirators, the operational work was supplemented by greater exchanges of information with central and local authorities and with the forces of neighbouring States. Active steps are being taken to track down members of the Hizb ut Tahrir religious extremist group and members of IMU and to bring them to criminal trial.

Paragraph 2 (a)

Question:

Which practical steps have been taken in Kyrgyzstan in order to suppress the recruitment of members of terrorist groups as required by the "*Treaty on Joint Action to Combat Terrorism, Political and Religious Extremism, Transnational Organized Crimes and Other Threats to Stability and Security*"?

Response:

Existing criminal law considers it an offence to recruit individuals for involvement in criminal activity, imposing imprisonment of up to five years. If the

offence harms the life or health of a person, it is punishable by imprisonment of up to 10 years.

The steps taken to halt the spread of religious extremist groups' ideology led Kyrgyzstan's internal affairs bodies to uncover 39 cases of propagation of religious enmity in the first quarter of 2003. Those cases resulted in 30 criminal trials, the detention of 33 individuals and the preventive registration of 1895 individuals, and the confiscation of 132 items of religious extremist literature, 871 pamphlets, 8 videos, 11 copies of plans to expand the Caliphate and one weapon.

Question:

Is there any provision in Kyrgyz law to prohibit the acquisition of firearms without a licence (especially at the time of purchase)?

Response:

Production, repair and trading of weapons and munitions in Kyrgyzstan require a specific permit (licence) issued in accordance with the Licences Act.

The Weapons Act restricts the circulation of civilian and service weapons.

In particular, the sale outside specialized stores without the written permission of the internal affairs authorities of second-hand weapons and munitions not included in the State register of civilian and service weapons, and of the owner's permit to possess and carry weapons.

Moreover, Kyrgyz legislation establishes criminal liability for "the illegal acquisition, transfer, sale, storage, transport or carrying of firearms, ammunition, explosive materials and explosive devices" (which are punishable by arrest for a period of up to six months or imprisonment for up to three years with a fine amounting to 200 to 500 times the minimum monthly salary). The same acts, committed by a group of persons on the basis of prior agreement or repeatedly, are punishable by imprisonment for a period of two to six years. Acts committed by an organized group are punishable by imprisonment for a period of three to eight years.

The import into and export from Kyrgyzstan of military firearms, edged weapons, individual sporting, hunting and gas weapons of self-defence and pneumatic weapons take place on the basis of a permit from the internal affairs authorities, taking into account the requirement of the Weapons Act. In addition, the Instructions on the work of the internal affairs authorities to monitor the circulation of civilian and service weapons and on the procedure for opening shooting ranges, target ranges, shooting and hunting stands and weapons repair workshops provide that weapons and ammunition are acquired abroad and imported into or exported from Kyrgyzstan by suppliers on the basis of a manufacturing and trading licence after the corresponding permit has been obtained from the Public Safety Board of the Ministry of Internal Affairs.

The import into Kyrgyzstan by suppliers of individual weapons and munitions for the conduct of technological tests or for exhibition purposes takes place on the basis of permits issued by the Public Safety Board.

Foreign nationals may acquire civilian weapons under permits issued by the Public Safety Board on the basis of applications by the Governments of the States of

which they are nationals on condition that they export the weapons from Kyrgyzstan not more than five days after acquiring them.

Hunting and sporting weapons may be imported into Kyrgyzstan by foreign nationals if they are in possession respectively of a hunting contract or an invitation to take part in a sporting event and of a permit from the Public Safety Board. The weapons must be exported within the period specified in the contract or invitation and indicated in the permit.

Foreign nationals are prohibited from importing into Kyrgyzstan and using in its territory all forms, types and models of weapons for purposes of ensuring their personal security, protecting the lives, health and property of other citizens, escorting cargoes and other purposes not indicated in the first part of this section, unless so provided in international agreements to which Kyrgyzstan is a party.

Question:

Please outline the Kyrgyz Republic's export control regime for weapons to the extent that it is relevant for the implementation of this paragraph.

Response:

Currently, control over the export and import of individual types of raw and other materials, equipment and technology, scientific and technical information, works and services and dual-purpose products which may be used to manufacture weapons of mass destruction or the means of their delivery, as well as armaments, military technology and other military technical materials, is conducted in accordance with the Export Controls Act, Licences, State Regulation of Foreign Trade Activity and Weapons Acts, and with resolutions of the Legislative Assembly of the Parliament of Kyrgyzstan of 8 June 1998 No. 1100-1 on approval of the procedure for the registration of the issue of licences of conduct of export-import operations and No. 1101-1 on approval of lists of groups whose export and import is conducted under licences. Regulations on Kyrgyzstan's export control system are currently being drafted, and a national list of controlled production is being drawn up.

Paragraph 2 (b)

Question:

Please provide information on the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security, with particular regard to the border controls preventing the movement of terrorists.

Response:

Kyrgyzstan's ministries and departments regularly exchange information derived from investigations, intelligence and forensic studies on:

Specific cases, instances and persons associated with illicit inter-State drug trafficking;

Vehicles, cargoes, postal consignments and routes utilized in illicit inter-State narcotics trafficking;

Methods of concealment and disguise used in transporting and marketing drugs;

New types of drugs appearing in illicit trafficking, the technologies for their manufacture and the substances used in it, and other information of mutual interest.

In addition, joint operations are conducted to arrest drug traffickers who have both interregional and international connections.

The Kyrgyz Border Service has set up at border checkpoints a unified interdepartmental information network which includes an automated border control system (ABCS) to monitor the entry, presence and departure of foreign nationals.

The aim of ABCS is:

To compile and store information on the recording of citizens' entry and exit and to provide statistical data for use in analysing migration processes;

To provide information support for the investigation and other concerned services.

The purpose of ABCS is to:

Speed up and simplify the passport control process and make it more effective;

Prevent entry using false documents and entry by persons legally prohibited from entering the CIS countries;

Identify persons under investigation who are of interest to the relevant services of the law enforcement agencies and foreign nationals and stateless persons illegally present in the territory of Kyrgyzstan.

The databank consists of the following components:

A database on individuals who have crossed, in either direction, the State border between a CIS country and a country outside CIS;

A database on vehicles;

A database on persons prohibited from entering or leaving Kyrgyzstan ("blacklists") with information on when they were blacklisted and for how long;

A database on lost and false documents.

ABCS was developed by the Interalliance company in accordance with the requirements of the Kyrgyz Border Service, taking into account the recommendations of the International Organization on Migration and the Russian, Belorussian, Georgian and Canadian border services.

Question:

Which Kyrgyz institutions are responsible for providing early warning to other States?

Response:

Kyrgyzstan participates in information exchange with other States with the purpose of preventing the commission of terrorist acts on both a bilateral and a multilateral basis, including through Interpol.

Early warnings to other States are channelled through the law enforcement agencies and security services (the Security Council of Kyrgyzstan, the National Security Service, the Ministry of Internal Affairs, the Office of the Prosecutor-General, the Border Service and the Ministry of Defence).

In addition, on 12 April 1996 the CIS member States concluded an Agreement on exchange of information relating to protection of the external borders on the basis of which national information systems were established and unified databanks on protection of the external borders of the States members of the Commonwealth were organized. The lists of types of information for mutual exchange between the border services of CIS member States includes information on:

Preconditions giving rise to states of emergency which destabilize the situation on the external borders of CIS member States;

External and internal political, military and economic action by non-CIS States on the external borders which has an impact on the security of other CIS States;

Impending (or completed) transfers across the borders and territory of CIS member States of arms, ammunition, explosives and radioactive, toxic or psychotropic substances, or other items and goods the import or export of which is prohibited by the domestic laws of CIS member States and by international agreements, and also the channels, methods, means and contrivances used by smugglers and illegal migrants on the border;

Persons involved in international drugs trafficking, terrorism and other forms of international crime who are likely to appear at external borders, and persons wanted by the police and intending to violate the external borders across the territory of other CIS States;

Organizations and groups whose activities across external borders are designed to stir up international conflicts.

Paragraph 2 (d)

Question:

Which practical steps have been taken in Kyrgyzstan in order to prevent the persons listed in this subparagraph from using Kyrgyz territory against other States or their citizens as required by the "*Treaty on Joint Action to Combat Terrorism, Political and Religious Extremism, Transnational Organized Crimes and Other Threats to Stability and Security*"?

Response:

In order to prevent the possibility of Kyrgyzstan's territory being used against other States or their nationals, work is constantly under way to improve the structures responsible for protecting the State border and ensuring the security of the Republic. The establishment at the end of 2002 of a separate Border Service is one

of the actions aimed at ensuring that terrorists cannot cross Kyrgyzstan's border unimpeded and engage in any type of unlawful activity in its territory, including activity directed against other States and their nationals. Kyrgyzstan's armed forces in the southern regions of Kyrgyzstan have also been reinforced.

Within the framework of the Organization of the Treaty on Collective Security, a military component of the Collective Rapid Response Forces for the Central Asia Region has been deployed at the Kant military airbase in Kyrgyzstan. In August 1992, a Branch of the CIS Anti-Terrorist Centre for the Central Asia Region was established on the basis of the Operational Group of the CIS Anti-Terrorist Centre for the Central Asia Region. Within the framework of the Shanghai Cooperation Agreement, the issue of establishing a regional anti-terrorist structure of the Organization headquartered at Bishkek is in the final stages.

In addition, there is already positive experience of cooperation with the law enforcement agencies of member countries of the Shanghai Cooperation Organization and CIS. For example, in July 2002 the law enforcement agencies of Kyrgyzstan arrested and handed over, at the request of the Ministry of Public Security of China, Israil Rakhmutullah and Yakub Erkin, Chinese nationals and members of the Shark Azutlyk Turkestan extremist separatist organization, who had murdered in Bishkek the First Secretary (Consul) of the Chinese Embassy in Bishkek, Wang Jianping, and the businessman Nurmuhamed Umar.

Paragraph 2 (e)

Question:

Please provide the CTC with a progress report on the proposals to amend the Penal Code (page 14 of the report), particularly with regard to article 226 (page 17), to the extent that they are relevant for the implementation of this subparagraph.

Response:

These amendments have not yet been introduced into Kyrgyzstan's Criminal Code. However, in March 2003 a working group was established under the leadership of the First Deputy Prime Minister to draw up proposals for the introduction of amendments and additions to Kyrgyzstan's current criminal legislation relating to an increase in the penalties for participation in extremist organizations and terrorist activity.

Question:

According to the report, hostage takers or members of illegally armed organizations are not brought to justice if they surrender "voluntarily". How do the responsible Kyrgyz authorities interpret the term "voluntarily", given that the persons concerned know that they would be punished if they do not surrender?

Response:

Under the Kyrgyz Criminal Code (art. 29), voluntary abstention from a crime is recognized by a person's cessation of preparatory action for, or of action or inaction directly aimed, at the commission of a crime, provided that the person was aware of doing wrong and had a real possibility of carrying the crime through to its

completion. A person who voluntarily refrains from carrying a crime through to its completion is brought to justice only if the act he actually committed contains an element of another crime.

At present, however, there are no instances in the practice of Kyrgyz organs of justice of voluntary abstention from committing crimes in the category in question, and it is therefore not possible to analyse them and make a relevant assessment.

Question:

What is the competence of the courts of Kyrgyzstan to deal with criminal acts of each of the following kinds:

An act committed outside Kyrgyzstan by a person who is a citizen of, or habitually resident in, Kyrgyzstan (whether that person is currently present in Kyrgyzstan or not);

An act committed outside Kyrgyzstan by a foreign national who is currently in Kyrgyzstan?

Response:

In hearing criminal cases, the courts are guided by the provisions of Kyrgyzstan's criminal and criminal procedural legislation. Thus, pursuant to article 6 of the Criminal Code, a Kyrgyz national or a stateless person permanently resident in Kyrgyzstan who commits a crime outside Kyrgyzstan is liable under Kyrgyz criminal legislation if he has not been punished pursuant to a verdict of a foreign court.

Nationals of Kyrgyzstan who commit a crime in the territory of another State are not subject to extradition to that State.

Foreign nationals and stateless persons who commit a crime outside Kyrgyzstan and are in its territory may be extradited to the foreign State to be brought to criminal justice or serve a sentence in accordance with an international treaty.

Paragraph 2 (f)

Question:

What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings, including those relating to the financing or support of terrorist acts, must be met? How long does it actually take in practice to implement such a request in Pakistan?

Response:

Under the terms of the Agreement on legal assistance between organs of the prosecution service, an application for legal assistance is acted upon in not more than one month. The practice of providing legal assistance in criminal cases indicates that this period is fully sufficient for the execution of such assignments.

Paragraph 2 (g)

Question:

Please explain how the procedures for the issuance of identity papers and travel documents prevent the counterfeiting, forgery or fraudulent use of those documents and what other measures exist to prevent their forgery, etc.

Response:

Pursuant to Government Resolution No. 775 of 17 October 1994 on the approval of the regulations governing the passport system in Kyrgyzstan, the specimen passport and its description, Kyrgyz national passports are issued to citizens on the basis of the following documents:

A completed application form with the applicant's photograph and the seal of the housing management and housing and utilities office (section) or the local government authority;

A birth certificate;

The passport to be replaced, subsequently to be submitted to the internal affairs authorities of the place of residence.

The Ministry of Internal Affairs is currently studying the possibility of strengthening the protection of national passports.

The Ministry of Foreign Affairs of Kyrgyzstan has taken certain measures to introduce a numbered visa sticker in order to strengthen protection of the national visa. The visa stickers introduced make it possible to considerably strengthen protection of the national visa and solve the problem of illegal migration into Kyrgyzstan.

Visa stickers began to be used as of 1 May 2003 in the consular service department and the consular agency of the Ministry of Foreign Affairs of Kyrgyzstan at Manas international airport.

A first batch of 25,000 visa stickers, comprising 13 levels of protection, has so far been received. Instructions have been drawn up on the procedure for filling out, storing and accounting for visa stickers. In the first stage, visa stickers will be sent to diplomatic missions and consular establishments of Kyrgyzstan accredited to States where cases of forgery of Kyrgyz visas have been detected.

In view of the low level of security of national passports, the Government of Kyrgyzstan plans to establish an interdepartmental commission with the participation of representatives of the International Organization for Migration and the United States Embassy to consider the introduction of a new passport system and, specifically, the introduction of new international passports for travel outside Kyrgyzstan.

Question:

Could Kyrgyzstan please outline the provisions of the draft laws adopted subsequent to agreements entered into with France, Canada and the United States of America in the framework of the "Enduring Freedom" counter-terrorism operation to the extent they are relevant for the implementation of this subparagraph.

Response:

This paragraph was erroneously included in Kyrgyzstan's initial report.

Paragraph 3 (a) and (b)

Question:

Please list the countries which are outside the framework of "Enduring Freedom" and do not belong to CIS or the Shanghai Cooperation Organization with which Kyrgyzstan cooperates in order to prevent and suppress terrorist attacks and take action against perpetrators of such acts.

Response:

The Counter-Terrorism Act defines the appropriate procedure for cooperation. A request for legal assistance may be sent to the competent authorities of Kyrgyzstan.

In the response to paragraph 3 (c) there is a list of States with which Kyrgyzstan has entered into bilateral treaties on extradition and mutual legal assistance.

Paragraph 3 (c)

Question:

With which countries has Kyrgyzstan entered into bilateral treaties on extradition and mutual legal assistance?

Response:

Kyrgyzstan has signed and ratified treaties and agreements on the provision of mutual legal assistance and extradition with the following States:

- Treaty between the Kyrgyz Republic and the Republic of Kazakhstan on the provision of mutual legal assistance and legal relations in civil and criminal cases, of 26 August 1996 (act of ratification, 15 April 1997);
- Treaty between the Kyrgyz Republic and the Republic of Uzbekistan on legal assistance and legal relations in civil, family and criminal cases, of 24 December 1996 (act of ratification, 5 July 1997);
- Treaty between the Kyrgyz Republic and the Russian Federation on legal assistance and legal relations in civil, family and criminal cases, of 24 January 1994 (act of ratification, 25 January 1994);
- Treaty between the Kyrgyz Republic and the Russian Federation on the legal status of nationals of the Kyrgyz Republic who are permanently resident in the territory of the Russian Federation and of nationals of the Russian Federation who are permanently resident in the territory of the Kyrgyz Republic (act of ratification, 31 July 2000);
- Treaty between the Kyrgyz Republic and the Republic of Tajikistan on the provision of mutual legal assistance in civil, family and criminal cases, of 6 May 1998 (no information on ratification);

- Treaty between the Kyrgyz Republic and the Republic of Azerbaijan on legal assistance and legal relations in civil, family and criminal cases, of 5 August 1997 (act of ratification, 19 December 1997);
- Treaty between the Kyrgyz Republic and the Republic of Latvia on legal assistance and legal relations in civil, family and criminal cases, of 10 April 1997 (act of ratification, 19 February 1997);
- Treaty between the Kyrgyz Republic and the People's Republic of China on legal assistance in civil and criminal cases, of 4 June 1996 (act of ratification, 15 April 1997);
- Treaty between the Kyrgyz Republic and the Republic of India on the provision of legal assistance in criminal cases, of 13 April 1999 (reportedly not ratified);
- Treaty between the Government of the Kyrgyz Republic and the Government of Mongolia on legal assistance and legal relations in criminal cases, of 4 December 1999 (not ratified);
- Treaty between the Union of Soviet Socialist Republics and Czechoslovakia on legal assistance and relations in civil, family and criminal cases, of 12 August 1982 (in effect for the Kyrgyz Republic pursuant to a presidential decree of 21 July 1999);
- Agreement between the Government of the Kyrgyz Republic and the Government of the Federal Republic of Germany on cooperation in combating organized crime, terrorism and other highly dangerous crimes, of 2 February 1998 (no information on ratification);
- Agreement between the Government of the Kyrgyz Republic and the Government of the Czech Republic on cooperation in combating organized crime, illicit trafficking in drugs, psychotropic substances and precursors, terrorism and other dangerous types of crimes, of 8 April 1998 (entered into force 30 days after signature);
- Memorandum between the Kyrgyz Republic and the United Kingdom of Great Britain and Northern Ireland on cooperation in combating serious crimes, organized crime and illicit trafficking, of 26 January 2000 (entered into force on the date of signature);
- Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on cooperation in combating crime, of 9 July 1999 (act of ratification, 26 November 2000);
- Treaty between the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan on joint action to combat terrorism, political and religious extremism, transnational organized crime and other threats to the stability and security of the parties, of 21 April 2000 (act of ratification, 26 November 2000);
- Treaty between the Kyrgyz Republic and the Republic of Kazakhstan on the extradition of criminals and criminal prosecution, of 8 April 1997 (act of ratification, 19 December 1997);

- Treaty between the Kyrgyz Republic and the Republic of Azerbaijan on the extradition of persons sentenced to imprisonment in order to serve further penalties, of 5 August 1997 (no information on ratification);
- Extradition treaty between the Kyrgyz Republic and the Republic of Azerbaijan, of 5 August 1997 (act of ratification, 24 July 1998);
- Extradition treaty between the Kyrgyz Republic and the People's Republic of China, of 27 April 1998 (not ratified).

Paragraph 3 (d)

Question:

The Counter-Terrorism Committee would welcome a progress report, in relation to the 12 relevant international conventions and protocols relating to terrorism, on:

- the steps taken in order to become a party to the instruments to which Kyrgyzstan is not yet a party; and
- progress made in enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

Response:

To date, Kyrgyzstan has acceded to the following international conventions and protocols relating to terrorism:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in Tokyo on 14 September 1963. Entered into force for Kyrgyzstan on 28 May 2000.
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed in The Hague on 16 December 1970. Entered into force for Kyrgyzstan on 26 March 2000.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 23 September 1971. Entered into force for Kyrgyzstan on 26 March 2000.
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed in Montreal on 24 February 1988. Entered into force for Kyrgyzstan on 29 March 2000.
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed in Montreal on 1 March 1991. Entered into force for Kyrgyzstan on 12 September 2000.
- International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on 15 December 1997. Entered into force for Kyrgyzstan on 30 May 2001.

In addition, on 15 April 2003, the President of the Kyrgyz Republic signed the following legislation:

- Act on accession to the International Convention against the Taking of Hostages;
- Act on accession to the International Convention for the Suppression of the Financing of Terrorism;
- Act on accession to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- Act on ratification of the United Nations Convention against Transnational Organized Crime and its protocols.

Kyrgyzstan's relevant ministries and departments are also studying the possibility of acceding to the remaining conventions: the Convention on the Physical Protection of Nuclear Material; the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

Paragraph 3 (e)

Question:

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which Kyrgyzstan is a party?

Response:

Under article 12 of the Constitution of Kyrgyzstan, international treaties and agreements which have taken effect in accordance with a procedure prescribed by law and to which Kyrgyzstan is a party, as well as the generally recognized principles and norms of international law, are an integral part of Kyrgyz legislation.

The relevant international treaties concerning extradition of criminals to which Kyrgyzstan is a party cover actions criminalized under the legislation of both Contracting Parties for which the penalty is deprivation of liberty for at least one year or another more serious penalty under the legislation of the Contracting Parties.

Anyone who commits a crime against public security (relating to terrorism) is liable under Kyrgyzstan's existing criminal legislation and in particular the following provisions of the Criminal Code: articles 226 (Terrorism), 227 (Taking of hostages), 228 (Intentional supplying of false information about a terrorist act), 229 (Organization of or participation in illegal armed groups), 230 (Banditry), 231 (Creation of a criminal association (criminal organization)), 232 (Hijacking of air or maritime transport or of railway rolling stock) and 233 (Mass disturbances).

Under article 6 of the Criminal Code, Kyrgyz nationals and stateless persons permanently resident in Kyrgyzstan bear criminal liability for crimes committed abroad only if they have not been convicted in the foreign State and if the act

committed is recognized as a crime both in Kyrgyzstan and in the State on the territory of which it was committed.

The extradition of persons sentenced in one State to serve the sentence in another State is also covered in bilateral and multilateral international treaties.

Paragraph 3 (f) and (g)

Question:

1. Please elaborate on how Kyrgyzstan verifies information provided by persons applying for refugee status. Is (or will) this verification procedure be based on one of the legal or regulatory provisions referred to on page 24 of the report? If so, please outline those provisions to the extent that they are relevant to the implementation of these subparagraphs.

2. Please inform the Counter-terrorism Committee when the law of the Kyrgyz Republic "On refugees" has entered into force.

Response:

1. The situation has changed somewhat since the earlier report (p. 24), because the Refugees Act has been in force since 29 March 2002.

Information provided by applicants for refugee status in Kyrgyzstan under the Provision on work with refugees, approved by Government Resolution No. 188 of 4 April 2003, is verified in the course of the application processing procedure. According to paragraph 2 (f) of this Provision, the procedure comprises:

An interview with the applicant;

Verification of the authenticity of the documents submitted and of the reliability of the information received;

Drafting of an opinion giving the results of consideration of the application;

Adoption of a decision to grant refugee status.

In addition to the interview results, the decision is based on information concerning the country of origin and materials received from Kyrgyzstan's diplomatic missions and from the Office of the United Nations High Commissioner for Refugees. Applicants are also checked against the database listing persons prohibited from entering the territory of CIS States and the database of the Unified Inter-departmental Information Network.

Moreover, under paragraph 8 of the above-mentioned Provision, if an application is submitted by a person who is present in Kyrgyzstan without the appropriate entry permit or identity document or with a counterfeit document, the immigration control organs receiving the application hold the applicant in a place of temporary detention at the point of entry across Kyrgyzstan's State border, in order to:

Establish the person's identity;

Clarify the circumstances in which an application is being made for refugee status;

Conduct a hearing, in the event that identity documents have been destroyed or counterfeit documents have been used;

Defend national security and protect public order.

At the same time, the immigration control organs inform the Migration Service Department in the Ministry of Foreign Affairs or its territorial offices that the applicant is being held in a place of temporary detention.

Applicants may not be held in temporary detention for more than 72 hours.

There is cooperation with other offices in identification issues and in checking of uncorroborated statements.

2. Kyrgyz legislation on refugees includes:

The 1951 United Nations Convention on the Status of Refugees and its 1967 Protocol;

The Refugees Act adopted on 25 March 2002, which came into force on 29 March 2002.

The Provision on work with refugees, approved by Government resolution No. 188 of 4 April 2003 (adopted under the Refugees Act).

Under article 1 of the Refugees Act, a refugee is defined as a person who is not a Kyrgyz national and who applies to Kyrgyzstan for recognition as a refugee after being forced to leave his place of permanent residence in the territory of another State owing to well-founded fear of being persecuted on grounds of race, religion, nationality, political beliefs or membership of a particular social group, or real fear of being persecuted in armed international conflicts and who is unable, owing to such fear, or unwilling to avail himself of the protection of his country.

Article 5 of the Refugees Act specifies that a person cannot be granted refugee status if he has committed a serious or especially serious crime of a non-political nature outside Kyrgyzstan and before he was admitted to Kyrgyzstan as a person seeking refugee status.

Because under Kyrgyz legislation terrorism and terrorist acts belong in the category of especially serious crimes, this provision may be considered grounds for denying refugee status to persons involved in terrorist activity.

Article 12 of the Refugees Act states that a refugee cannot be returned against his will to the country which he left for the reasons mentioned in the first part of article 1 of the Act.

However, this does not apply to a refugee who is considered for valid reasons to be a threat to security or has been sentenced by a valid court order for commission of an especially serious offence.

This rule can be used to prevent abuse of refugee status.

In Kyrgyzstan, there are no instances of refugee status being granted to persons involved in terrorism or terrorist acts.

Paragraph 4

Question:

Has Kyrgyzstan addressed any of the concerns expressed in paragraph 4 of the resolution?

Response:

See response to paragraph 3 (d).

Aware of the close connection between international terrorism and transnational organized crime, illegal drugs, money-laundering, illegal arms-trafficking and illegal movement of nuclear, chemical, biological and other potentially deadly materials, Kyrgyzstan is endeavouring to contribute to the strengthening of international regimes for the non-proliferation of weapons of mass destruction. Pursuit of a non-proliferation policy is one of the pillars of Kyrgyz foreign policy.

Mention may be made of the following recent events:

On 24 April 2003, the Minister of Foreign Affairs submitted for the consideration of the deputies in the Legislative Assembly of the Parliament draft legislation on ratification of the Comprehensive Nuclear-Test-Ban Treaty. Following the Assembly meeting, the legislation was approved and the Legislative Assembly adopted a resolution embodying an Act on ratification of the Treaty. Kyrgyzstan has thus practically completed arrangements for the ratification of this important Treaty, which is the cornerstone of non-proliferation.

Kyrgyzstan's application for membership in the International Atomic Energy Agency (IAEA) was considered and approved at last year's IAEA General Conference. Under article 4 of the Agency's Statute, ratification of the Statute is a prerequisite for full IAEA membership. At the initiative of the Ministry of Foreign Affairs, by resolution No. 262 of 2 May 2003, the Government submitted to Parliament draft legislation on ratification of the IAEA Statute.

On 29 April 2003, the President signed Act No. 89 on ratification of the Convention on the Prohibition of the Development, Production and Stockpiling of Chemical Weapons and on Their Destruction.

In addition, Kyrgyzstan is studying the possibility of acceding to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

Kyrgyzstan remains committed to the creation of a nuclear-weapon-free zone in Central Asia and attaches special significance to the unanimous adoption at the fifty-seventh session of the United Nations General Assembly of a resolution calling on all States to support this initiative and to assist in the creation of the zone. We are convinced that the creation of a nuclear-weapon-free zone in our region, based on trust between our States, will strengthen peace and security at the regional and global levels.

The process of creating the zone is now in the concluding phase and agreement is being reached on certain outstanding details.

Kyrgyzstan's participation in the non-proliferation process would not have been so effective without the support of friendly countries, the United Nations, IAEA and other international organizations.

Other matters

Question:

Could Kyrgyzstan please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

Response:

Kyrgyzstan's organs of State authority are cooperating in the implementation of resolution 1373 under articles 5 and 6 of the Act on combating terrorism.

In addition, monitoring of financial activity in order to promote implementation of the resolution is the responsibility of several departments: the National Security Service, the Ministry of Internal Affairs, the Department of Tax Inspection of the Revenue Committee in the Ministry of Finance, and the National Bank.

The organizational chart of one of the departments — the National Bank of Kyrgyzstan — is given below.

The basic tasks and functions of the National Bank of Kyrgyzstan are determined by its mission goals. Functions and responsibilities are divided between the National Bank's structural units, which together make up its organizational structure.

The National Bank's organizational structure reflects two underlying principles:

- The principle of relevance of functional structure;
- The principle of ongoing development and improvement.

The relevance principle means that the workload of all individual structural units and links must be directly related to a particular function of the National Bank and must promote the attainment of its goals.

The principle of ongoing development and improvement means that the existing structure of the National Bank is not static: it changes and will change to reflect changes in basic tasks, development priorities, economic transformations and reforms taking place in the State.

In view of current economic conditions and requirements, the National Bank has the following organizational structure:

- The Economic Department;
- The Money and Credit Transactions Department;
- The Currency Department;
- The Cash Balance Department;

- The Banking Supervision Department;
- The Oversight and Licensing Methodology Department;
- The Accounting and Reporting Department;
- The Payment Systems Department;
- The Information Systems Department.

It should be noted that the National Bank is organized to perform simultaneously in three capacities: as a State bank, as a banks' bank and as a simple enterprise in the territory of Kyrgyzstan. In addition to its functional units, the Bank has units working directly to ensure that the Bank operates without interruption and efficiently as a whole, as a body corporate in the territory of Kyrgyzstan. These structural units include:

- The External and Public Relations Division;
- The Internal Audit Division;
- The Division of Supervision of Non-banking Institutions;
- The Economic Research Unit;
- The Personnel Division;
- The Legal Division;
- The Finance Division;
- The Data Protection Division;
- The Security Division.

An organizational chart of the National Bank is attached.

Question:

The Counter-Terrorism Committee would be grateful to receive a copy of the Act "on combating (counteracting) terrorism" referred to on pages 12 and 15 of the report and, if it is a different law, Act No. 116 of the Kyrgyz Republic of 21 October 1999 "on the fight against terrorism".

Response:

The Counter-Terrorism Act, No. 116 of 21 October 1999, is submitted as an attachment to the present supplementary report. This Act lays down the organizational and legal bases for combating terrorism and the arrangements for coordinating the activities of the bodies engaged in doing so.